

AN ORDINANCE BY COUNCILMEMBER

MICHAEL BOND

AN ORDINANCE TO ENACT A NEW DIVISION/CHAPTER OF THE CITY OF ATLANTA CODE OF ORDINANCES ENTITLED "PROHIBITION AGAINST PREDATORY LENDING," AND AMENDING SECTIONS OF THE CITY OF ATLANTA CODE OF ORDINANCES GOVERNING LICENSING, INVESTMENTS AND DEPOSITS OF CITY FUNDS ETC. SO AS TO PROHIBIT ALL BUSINESS ENTITIES AND THEIR AFFILIATES FROM MAKING, ISSUING OR ARRANGING ANY SUBPRIME OR HIGH-COST LOAN, OR ASSISTING OTHERS IN DOING SO, IN ANY MANNER WHICH HAS BEEN DETERMINED TO BE ABUSIVE, UNSCRUPULOUS AND MISLEADING, PROVIDING PENALTIES FOR NON-COMPLIANCE; PROVIDING REMEDIES TO AGGRIEVED PARTIES; TO REPEAL CONFLICTING ORDINANCES; AND FOR OTHER PURPOSES.

WHEREAS, the governing body of the City of Atlanta has received complaints that elderly persons are losing their homes because of loans that homeowners entered into with terms that they misunderstood or did not understand; and

WHEREAS, the Mayor and the governing body of the City of Atlanta seek to protect the health, safety and welfare of its citizens; and

WHEREAS, loan practices that take advantage of the most vulnerable of our citizens are contrary to the public interest and threaten the viability and stability of area neighborhoods and their citizens.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA HEREBY ORDAINS:

SECTION 1.

A new Chapter/Division of the City of Atlanta Code of Ordinances be created entitled "Prohibition Against Predatory Lending", is hereby enacted, to read as follows:

CHAPTER/DIVISION___ PROHIBITION AGAINST PREDATORYLENDING PRACTICES.

Legislative Findings.

(1)The City Council of the City of Atlanta, Georgia finds:

- (a)that citizens from many lower and moderate income neighborhoods in Georgia have been unable to access legitimate financing for home purchases and renovations, allowing predatory lenders to thrive; and**
- (b) that these predatory lenders are charging exorbitant fees and interest rates and are persuading citizens to incur mortgage debt in excess of their needs or ability to pay often through fraudulent means; and**
- (c)these predatory lending practices appear to be targeting elderly and vulnerable borrowers; and**
- (d)that to protect the citizens of Atlanta and its neighborhoods from lending practices which strip hard earned equity from city residents and contribute to the problem of vacant and abandoned houses by making loans that families cannot afford to repay.**

Section 2.

It is the intent and purpose of this Chapter:

- (a)to collect and make available to the public information necessary for city residents to protect themselves against predatory lending practices; and**
- (b)to prevent the lenders engaged in predatory lending and those persons providing referrals and services to those lenders from enjoying the privilege of doing business with our City; and**
- (c)to prevent predatory lenders and those persons providing referrals and services to those lenders from taking advantage of city programs designed to encourage home ownership and home repair.**

Section 3.

Definitions.

The following definitions shall apply throughout this Chapter:

- (1)"Affiliate ". Any entity that controls, is controlled by, or is under common control with, another entity, including any successors in interest or alter egos.**
- (2) "Annual percentage rate " means the annual percentage rate for the loan calculated according to the provisions of the federal Truth in Lending Act (15 U.S.C. §1601 et. seq.), and the regulations promulgated thereunder by the Federal Reserve Board (as said Act and regulations are amended from time to time).**
- (3) "Business Entity ". Any individual, domestic corporation, foreign corporation, association, syndicate, joint stock company, partnership, joint venture, or unincorporated association, including any parent company, subsidiary, exclusive**

distributor or company affiliated therewith, engaged in a business or commercial enterprise;

(4) "City ". The City of Atlanta;

(5) "City Agency ". The City of Atlanta, its departments, boards and commissions;

(6) "City-related Agency". All authorities and quasi public corporations which either:

- (a) receive appropriations from the City; or
- (b) have entered into continuing contractual or cooperative relationships with the City; or
- (c) operate under legal authority granted to them by City ordinance.

(7) "High Cost Lender" means a business entity that, through itself and/or an affiliate has made, issued or arranged or assisted others in so doing, within any 12 month period, high cost loans that comprise either:

- (a) 5% of the total annual number of loans made, issued or arranged or 5% of the total annual number of loans which the business entity has assisted others in making, issuing or arranging; or
- (b) 10 individual loans; whichever is less.

The term "high cost lender" shall not include a business entity, or its affiliates, that has submitted to the Director of _____ a plan to discontinue the practice of making high cost loans, if the plan ensures:

- (1) the prompt disengagement from the practice of making, issuing, or arranging, or assisting others in so making, issuing, or arranging high cost loans by the business entity(s) and its affiliates, and
- (2) the complete cessation of the making, issuing or arranging, or assisting others in the making, issuing or arranging of high cost loans by the business entity and its affiliates within 90 days after the plan is submitted; provided that no more than one plan may be submitted on behalf of any business entity.

(8) "High Cost Loan". A loan that is secured by residential real property located within the City of Atlanta on which there is situated a dwelling for not more than four families or a condominium unit, or is secured by a cooperative unit within the City of Atlanta, if:

- (a) at any time over the life of the loan, the annual percentage rate of the loan equals or exceeds by more than 6 percentage points in the case of a first lien mortgage, or equals or exceeds by more than 8 percentage points in the case of a second mortgage, the yield on Treasury securities having comparable periods of maturity to the loan maturity as of the fifteenth day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor; or

(b) the total points and fees financed in such loan equal or exceed:

- (1) 4 percentage points of the total loan amount less the amount of such points and fees if the loan amount is \$16, 000 or greater, or
- (2) \$800 if the loan amount is less than \$16, 000.

However, "high cost loan" shall not include a loan that is made primarily for a business purpose unrelated to the residential real property securing the loan, a loan with an annual percentage rate below that of a threshold loan at all times over the life of the loan, or any loan which exceeds \$150, 000.

(9) "Points and Fees" means:

- (a) All items required to be disclosed under sections 226.4(a) and 226.4(b) of Title 12 of the Code of Federal Regulations, as amended from time to time, except the interest rate or time price differential;
- (b) Subject to the exclusions provided below in this section, all charges for items listed under section 226.4(c)(7) of Title 12 of the Code of Federal Regulations, as amended from time to time, but only if the lender receives direct or indirect compensation in connection with the charge or the charge is paid to an affiliate of the lender; otherwise the charges are not included within the meaning of the phrase "points and fees ";
- (c) All compensation paid directly or indirectly to a mortgage broker, including a broker that originates a loan in its own name in a table funded transaction, not otherwise included in paragraph (i) or (ii) of this section;
- (d) The premium of any single premium credit life, credit disability, credit unemployment or any other life or health insurance that is financed directly or indirectly into the loan.

"Points and fees " shall not include any charges or fees excluded by paragraphs (c) through (e) of Regulation Z of the Truth in Lending Act, section 226.4 of Title 12 of the Code of Federal Regulations, however, notwithstanding the foregoing, any fees for preparing loan-related documents, such as deeds, mortgages, and reconveyance or settlement documents shall be included in the definition of "points and fees ".

(10) "Predatory lender" means a business entity that, through itself and or an affiliate has made, issued or arranged, or assisted others in so doing, within any 12 month period, predatory loans that comprise either:

- (a) 5% of the total annual number of loans made, issued or arranged, or 5% of the total annual number of loans which the business entity has assisted others in so making, issuing or arranging; or
- (b) 10 individual loans; whichever is less.

The term "predatory lender" shall not include a business entity, or its affiliates, that has submitted to the Director of the Department of Planning and Neighborhood Conservation, or any department so designated by the City, a plan to discontinue the practice of making predatory loans, if the plan ensures:

- (a) the prompt disengagement from the practice of making predatory loans by the financial institution and its affiliates, and
- (b) the complete cessation of the making of predatory loans by the financial institution and its affiliates within 90 days after the plan is submitted; provided that no more than one plan may be submitted on behalf of any financial institution.

(11) "Predatory loan" means a threshold or high cost loan that was made under circumstances that involve any of the following acts or practices or that contain any of the following loan terms:

- (a) Fraudulent or deceptive acts or practices, including fraudulent or deceptive marketing and sales efforts to sell high cost loans;
- (b) "Loan Flipping". "Flipping" a loan means the making of a threshold or high cost loan to a borrower that refinances an existing loan secured by residential property in the City of Atlanta when:

- (1) More than 50% of the prior debt refinanced bears a lower interest rate than the new loan unless the advisability and appropriateness of the new loan is certified by a counselor employed by a housing counseling agency approved by the Department of Planning and Neighborhood Conservation or any department so designated by the City;
- (2) The borrower's payment of prepaid finance charges and closing costs reduces the interest rate such that it will take more than five (5) years for the borrower to recoup the transactions costs; or
- (3) Refinancing a special mortgage originated, subsidized or guaranteed by or through a state, tribal or local government, or nonprofit organization, which bears either a below-marked interest rate, or has nonstandard payment terms beneficial to the borrower, such as payments that vary with income, are limited to a percentage of income, or where no payments are required under specified conditions, and where, as a result of the refinancing, the borrower will lose one or more of the benefits of the special mortgage.

(c) "Balloon Payments". A loan that contains a scheduled payment that is more than twice as large as the average of earlier scheduled payments or which contains a provision that gives the lender, in its sole discretion, the right to accelerate the indebtedness in the absence of the default of the borrower.

(d) "Negative Amortization ". A loan which contains a payment schedule with regular periodic payments that cause the principal balance to increase.

(e) "Points and Fees ". The financing of points and fees in excess of 4 percentage points of the total loan amount less the amount of such points and fees

if the loan amount is \$16, 000 or greater, or \$800 if the loan amount is less than \$16, 000.

(f) "Increased Interest Rate ". A loan which contains a provision that increases the interest rate after default. Interest rate increases do not constitute a predatory loan practice in a variable rate loan where the increase is otherwise consistent

with the provisions of the loan documents, provided that the event of default or the acceleration of the indebtedness does not trigger the change in the interest rate.

(g) "Advance Payments". A loan which includes terms under which more than two periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower other than a loan issued by or guaranteed by city agencies, city-related agencies, or another state or federal government agency.

(h) "Modification or Deferral Fees ". A loan which includes terms under which the lender may charge a borrower any fees or other charges to modify, renew, extend, or amend a loan product or to defer any payment due under the terms of a loan product.

(i) "Mandatory Arbitration ". A loan which contains a mandatory arbitration clause that limits in any way the right of the borrower to seek relief through a court of law or equity.

(j) "Prepayment Penalties ". A loan which imposes prepayment fees or penalties on the borrower.

(k) "Financing of Credit Insurance". The financing of any credit life, credit disability, credit unemployment, or any other life or health insurance, directly or indirectly, into one or more high cost loans.

(l) "Lending Without Home Loan Counseling" in violation of this Ordinance.

(m) "Lending Without Due Regard to Repayment" in violation of this Ordinance.

(12) "Threshold loan" means a loan that is secured by residential real property located within the City of Atlanta on which there is situated a dwelling for not more than four families or a condominium unit, or is secured by a cooperative unit within the City of Atlanta, if at any time over the life of the loan, the annual percentage rate of the loan exceeds by at least four and one-half percentage points (4 ½%) but less than six and one-half percentage points (6 ½%), in the case of a first lien mortgage, or by at least six and one-half percentage points (6 ½%) but less than eight percentage points (8 ½%), in the case of a second mortgage, the yield on Treasury securities having comparable periods of maturity to the loan maturity as of the fifteenth day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor.

However, a "threshold loan " shall not include a loan that is made primarily for a business purpose unrelated to the residential real property securing the loan or a loan which exceeds \$100, 000.

Section 4.

Predatory Lending Practices Prohibited.

(1) Subjects to the limitations of articulated in this Ordinance, the following constitutes prohibited conduct:

(a) Issuing Predatory Loans

**Large
document
attached**